
**Modus tenendi Parlia=
menta in Hibernia.**

Published out of an Antient
Record by the Right Re=
verend Father in God
ANTHONY, Lord Bi=
shop of **M E A T H**.

To which is added the Rules
and Customs of the House,
Gathered out of the Journal
Books from the time of *Ed=
ward* the Sixth.

By *H. S. E. C. P.*

DUBLIN, Printed by *Andrew Crook*. Af=
signee of *Ben. Tooke*, Printer to Their Ma=
jesties, and are to be Sold at his House on
Ormonde-Key, and by the Booksellers of
Dublin.

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The Preface to the Reader.

Good Reader,

THe news of an approaching Parliament in this Kingdom has invited me to the Publication of this Antient Record concerning the manner of holding Parliaments in *Ireland*, which, if I am not much mistaken, is the very Original Record said by my

Lord Cook to have been in the custody of *4. Instit.*
Sir Christopher Preston in the 6th. of Hen. 4. *f. 12.*

It came to my hands among other Manuscripts and Papers of my ever Honoured Uncle Sir William Domville, late Attorney General in this Kingdom, which he was pleased to bequeath as a Legacy to me, and he told me in his life time upon an occasional discourse concerning it that it was bestow'd on him by Sir James Cusse, late Deputy Vice-Treasurer of *Ireland*, that Sir James found it among the Papers of Sir Francis Aungier, Master of the Rolls in this Kingdom, and Sir Francis his Grandson, the Right Honourable the Earl of Longford has lately told me that Sir Francis had it out of the Treasury of *Waterford*.

I am not ignorant of the disputes between my Lord Cooke and Mr. Pryme concerning the Antient manner of holding Parliaments in *England*, of which this is said to be a Transcript, the former affirming it to be a genuine piece of Antiquity, as Antient as the time of Edward the Confessor, the latter re-

puting it as spurious and no older *Prim. antiwad.*
then the Reign of King Henry 6th. *page 6.*
nor that the most learned Mr. Sel- *part. 2. c. 5. S. 26.*

den in his Titles of Honour hath decried it as a late imposture of a bold fancy not exceeding the Reign of King Edward the Third, but as I am not concern'd to vindicate the antiquity of the *English Modus*, so I shall not ingage my self in that Dispute, but shall only offer to the Reader, some considerations to Justify the antiquity and genuineness of our *Irish Modus*.

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It is affirm'd by my Lord Cāt
4th. Institut. f. 12. that after King *Henry the Second*
 had Conquered *Ireland*, that he
 fitted and Transcribed the *English Modus* into a Parchment
 ment Roll for the use of *Ireland*, that this Parchment
 Roll so transcribed remained in *Ireland*, that in the
 Sixth year of King *Henry 4th.* it was in the custody of
 Sir *Christopher Preston* a man of great Wisdom and
 learning, that in the same year *de assensu Johannis Tili-*
bor His Lieutenant there, and of His Council of *Ireland*
 King *Henry 4th.* exemplified it for the better holding
 of Parliaments in *Ireland*, and that it expressly appears
 in the exemplification that King *Henry 2d.* did trans-
 scribe this *Modus*, as aforesaid, To which give me leave
 to add these following particulars.

1. That it is affirmed by *Histors*
Hoveden in Hen. 2. p. 343. book of rians of good credit that *William the*
Litchfield in Sel- Conqueror did in the *4th.* year of his
dens Notes on Ead- Reign by the advise of his Barons
mer p. 171. Summon an Assembly of Nobles
 Wise and Experienced Persons
 in the Laws of *England*, *ut eorum Con-*
jura & consuetudines ab ipsis audiret that he might know
 what were their antient Laws and Customs, that *12*
 Men were Elected out of each County, who took an
 Oath *ut quoad possent recto transmire neq; ad dextram neq; ad*
sinistram partem avertentes legum suarum consuetudines
sancita patefacerent nihil prætermittentes nihil addentes
nihil prævaricando mutantes. And accordingly it ap-
 pears by *Matb. Paris* that the
In vita Hen. 1. p. 56. Conqueror did confirm those
 Laws to them with some Emenda-
 tions: *Legam Regis Edwardi vobis reddo* (sath he) *cum*
illis emendationibus quibus pater meus eam emendavit cum
consilio Baronum suorum.

2. That a Copy of the exemplification mentioned
 by my Lord Cook was communicated to Mr. *Selden* by
 Mr. *Haterwell* of *Lincolns-Inn*, and is to be found in his
 Titles

Preface to the Reader.

rd Titles of Honour, wherein an ex-
Secuſſ mention is made that *Henry part 2 c. 5 ſect. 26.*
that *H. Lord and Conqueror of Ire-*

Paroſ did ſent ſuch a *Modus* into this Kingdom, and be-
chmeuſe that book of *Mr. Seldens* is not readily had I ſhall
in therefore for the eaſe of the Reader tranſcribe that paſ-
body ge out of it. The ſtile whereof runs thus,

Henricus dei gratia Rex Angliæ & Franciæ & Dominus
Tſiberniæ omnibus ad quos præſentes literæ pervenerint ſalu-
relæm. Inſpeximus tenorem diverſorum Articulorum in quodam
oldinorulo pergameno ſcriptorum cum Chriſtophero de Preſton
ſpeſilitate tempore arreſtationis ſuæ apud villam de Clane per De-
tratuſatum dilecti & fidelis noſtri Johannis Talbot de Halom-
leahire Chivareri locum noſtrum tenentis terre noſtræ Hiber-

niæ nuper facta inventorum ac coram nobis & Conſilio no-
liſtro in eadem terra noſtra apud villam de Trym. Nono die
Januarii ultimo præterito oſtenſorum in hæc verba. Modus

of hrenendi parliamenti. Henricus Rex Angliæ Couque-
roſtor et Dominus Hiberniæ mittit hanc formam Ar-
lobiepiſcopis & piſcopis Abbatibus priozibus Comitibus
ſoribus Baronibus Juſticiariis Vicecomitibus Majori-
bus prepoſitis et omnibus fidelibus ſuis terre Hiber-
niæ tenendi Parliamentum Imprimis ſummonitio
parliamenti precedere debet per quadraginta dies &c.

Now I think it hardly credible that an exemplification
neq would have been made ſo ſolemnly of it by King *Henry 4.*

nen that it ſhould refer to a *Modus* Tranſmitted in *K. Henry*
nte 2d's time, and affirm that it was produced before the
ap Lord Juſtice and Council at *Trym* if no ſuch thing had
the been done, this were to call in queſtion the truth of all
of former Records and Tranſactions, and make the exem-
nd plication to contain an egregious lye in the body of it.

3 That the Character, Ink and Parchment are all ſo
um many Arguments for the Antiquity of it, and may con-
vince any Perſon that is unprejudiced in the controverſy,
ed ſthat it could not be ſo late as the time of *K. Hen. 6.*

by 4. That there are ſeveral internal Arguments con-
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been composed and transcribed in the Reign of King *Henry 2d.* as 1. That in the preamble he is stiled *Conquestor Hibernie*, which is a Title only proper to himself, for altho' he fought no Battle in this Kingdom, yet he reduced the *Irish* by force of Armes, yet the bare news of his presence, and the report of the Forces he brought over with him did open as fair and ready a way to the submission of the *Irish* as if he had conquered them with his sword. 2. That in the Title *Sessiones in Parlamento* mention is made of the 4 Archbishops of *Armagh, Dublin, Cashell* and *Tuam* who had received their Palls and took on them the fixed names of those places not above 20 years before the Conquest of King *Hen. 2.* being formerly stiled by the names of their respective Provinces. 3. That in the last Title *de constitutione Justitiarum* mention is made of the *procurator terre*, which was one of the stiles given to the Kings chief Governour of *Ireland* in the Reign of King *Hen. 2d.* but disused in after times when the names of *justitarius* & *locum tenens Hibernie* became more frequent; thus *William Fitz Adelmo* was sent into *Ireland* 23 of King *Hen. 2d.* Anno Domini 1177 by the name of *Procurator Regis* and in the year 1184 which was the 30th. of *K. Hen. 2d.* *Philip de Braose* was sent *Procurator in Hiberniam*, saith *Roger Hoveden*. 4. That upon the Authority of this last Title which grants a Liberty of choosing a Justice for the Kingdom in the absence of the King or his Procurator we find that immediately upon the death of *Earl Strangbow* the Council chose *Reymond le Grosse* to Govern the Kingdom till the Kings pleasure should be known, which in all probability they would not presume to do unless the Kings permission had authorized the fact as well as the necessity of their Affair obliged them to it.

Having said thus much in justification of our *Irish Modus* it may now seem reasonable to take into consideration the several exceptions of *Mr. Pryn* in his Animadversions, but because the most that is there offered doth relate to the

Anti-

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Antiquity of the *English Modus*, and there is nothing objected against the credit of the Record which I have published (which I believe was never seen by that learned and industrious Antiquary) further then as it agrees in some passages with the *English Modus* and where they agree in the Substance, yet there are such material differences in the manner of expressing it (as any one may perceive that will take the pains to compare them together) I shall therefore spare the Readers pains in making any remarks upon them having no other aim in the publication of this then to stir up the endeavours of the learned Searchers into Antiquity to find out the true Original and date of this Record.

There are only one or two things more that are necessary to be added for the Readers satisfaction. 1. That in the Section or Title *de Judicij casus dubij* there seems to be some omission of words which makes the sense Imperfect, and may easily be supplied out of the *English Modus*, viz. after the words *Et ipsi sex intras* add *Et hi tres in unum condescendere qui a seipso. &c.*

2 That in the last Section *de constitutione Justitiarum*, after the word *consecatur*, there should be added *constituantur Justiciarii per Consilium*, but tho' these defects are observable in the Record, yet I thought it not convenient to insert them in their proper places, because I did believe it inconsistent with the integrity of a Transcriber to add or alter any thing in the Original.

A. Midenf.

Modus

Modus tenendi Parliamenta & Consilia in Hibernia.

Henricus Rex Anglie Conquestor & Domi-
nus Hibernie, &c. Mittit hanc formam
Archiepiscopis Episcopis Abbatibus
Prioribus Comitibus Baronibus Ju-
sticiariis viceromitibus Majoribus prepositis Mini-
stris & omnibus fidelibus suis terre Hibernie tenen-
di parliamentum. In primis.

Summonitio.

Summonitio Parliamenti precedere debet per qua-
draginta dies ante primum diem Parliamenti.

Summonitio Clericorum

Summoniri & venire debent ad Parliamentum
omnes Archiepiscopi Episcopi Abbates Priores et alij
Clerici qui tenent per tenuram Comitatus vel Ba-
ronie integre & nulli alij minores custibus propriis cau-
sa tenure sue.

Item Summoniri debent Archiepiscopi E-
piscopi Abbates Priores Decani & Archidiaconi
exempti & alij privilegij qui habent Jurisdictionem
quod ipsi de ascensu Cleri pro quolibet Decanatu &
Archidiaconatu Hibernie & pro seipsis Decanis & Ar-
chidiaconis facere eligere debent duos sapientes &
competentes procuratores pro ipsis Archidiaconatibus
adveniens ad & essendum ad Parliamentum ad re-
spondendum supportandum alocandum & faciendum
quod quilibet & omnes de Decanatibus & Archideca-
natibus facerent vel faceret si personaliter interes-
sent

sent vel interesset & quod procuratores veniant cum
 cum varentis suis duplicatis sigillatis sigillis su-
 periorum suorum unde unum deliberetur Clerico
 Parlamento irrotulandum & aliud secum remaneat.

Summonitio Laicorum.

Summoniri & venire debent omnes Senatores &
 quilibet comes & Baro & Pares eorum videlicet qui
 habent terras redditus ad valenciam unius comitatus
 integri quod viginti feoda militum quolibet compu-
 tato ad viginti libras que faciunt CCCC vel valorem
 Barone integre (vizt. tresdecim feoda militum & ter-
 tiam partem feodi unius militis que faciunt CCCC
 marcas & nulli minores Laici vel Clerici custibus pro-
 prijs causa tenure sue nisi Rex summoniat consili-
 arios suos vel alios sapientes ex necessaria causa qui-
 bus mittere solebat precando eos custibus ipsius
 Regis venire & esse in Parlamento suo.

Milites Comitatum.

Item per brevia rex mittere debet cuilibet senescallo
 libertatum & cuilibet vicecomiti suo Hibernie quod fa-
 ciant eligere quilibet de assensu communis liber-
 tatis et comitatus sui duos Milites competentes ho-
 nestos & sapientes adveniendum ad Parliamentum
 ad respondendum supportandum allocandum & facien-
 dum quod omnes & quilibet communis libertatis
 & Comitatus facerent vel faceret si personaliter in-
 teressent vel interesset. Et quod milites veniant cum
 varentis ut predictum est de procuratoribus & quod
 sine licentia Parliamenti non discedant a Parlia-
 mento et post licentiam habeant breve directum senes-
 callo vel vicecomiti quod faciet dictos Milites suos
 habere de communitate sua rationabiles custus & ex-
 pensas suas a die remotionis eorum versus Parlia-
 mentum usque rationabilem diem quo ad propria re-
 venire a Parlamento poterunt. Et quod expense
 non excedunt unam Marcam de duobus militibus per
 diem.

Cibeg

Cibes & Burgentes.

Item eodem modo mittendum est Majoribus Val-
libis prepositis Cibitatum & Burgensibus defran-
seis quod de communi assensu Communium suorum e-
ligant duos cibos vel Burgenses, &c. ut dictum est
supra de Militibus & quod expense duorum cibium
vel Butgensium non excedant dimid. Marce —
per diem.

Principalis Clericus.

Item quod Rex inveniet custibus suis principalem
Clericum Parliamenti ad irrotulandum communia
placita & negotia Parliamenti qui tantummodo —
subjectus erit sine medio Regi & Parlamento suo in
communi & quum partes Parliamenti sint assignati ad
examinandum petitiones per seipsos & sunt concordēs
in iudicio suo tunc Clericus predictus repetet petiti-
ones & processus super ipsos & Partes reddent iudici-
um in pleno Parlamento. Et iste Clericus sedebit
in medio loco Iudic.

Item quod Iustitarius nullus sit in Parlamen-
to nec habet per ipsum recordum fieri in Parlamento
nisi nova potestas ei assignetur per Regem & Partes
Parliamenti in Parlamento & dictus Clericus de-
liberabit rotulos suos in Thesaurum ante finem Par-
liamenti.

Clericus Parliamenti

Item Rex assignare solet custibus suis unum bo-
num Clericum probatum ad scribendum dubitatio-
nes & responsiones quas Archiepiscopi & Episcopi fa-
cere voluerint Regi & Parlamento, & secundum
Clericum procuratoribus eodem modo tertium vero
Comitibus Baronibus & Paribus eorum eodem modo
quartum Militibus libertatum & Comitatum &
quintum Cibibus & Burgensibus qui Clerici semper
predictis erunt meorum consiliis intendentes quod si
vacaverint vel aliquis eorum vacaverit adjuvare de-
beant

bent principalem Clericum ad irrotulandum & ad minus assignare debet unum dominis & communibus spiritalibus & alium dominis & communibus temporalibus etiam Rex assignabit cum quolibet predictorum Clericorum unum Hospitariū & unum Clamatozem,

Gradus Parliamenti.

De Rege solo est primus gradus Parliamenti quia est caput commensor & finis Parliamenti secundus gradus de Archiepiscopis Episcopis Abbatibus Prioribus & paribus eorum per Comitatum vel Baroniam tenentibus est Tertius Gradus est de procuratoribus quartus gradus est de comitibus Baronibus & eorum paribus Quintus gradus est de militibus libertatum & comitatum Sextus Gradus est de Civibus & Burgenſibus & si contingat quod aliquis dictarum graduum excepto Rege absens a Parlamento fuerit nihilominus Parliamentum iudicatum est esse plenum.

De presentia Regis & absentia eius

Rex tenetur semper esse in Parlamento personaliter ni infirmitate impediatur & tunc infra manerium vel villam Parliamentum debet esse & mittere debet pro duobus Episcopis duobus Comitibus duobus Baronibus duobus Mililibus Comitatus duobus Civibus & duobus burgenſibus ad videndum personam suam & testificandum statum suum in quorum etiam presentia committere debet Archiepiscopo loci Comiti Terre & capitali Justitiario suo, quod incipiant & continuant Parliamentum nomine sue & Rex absentare non potest ni modo & causa supradictis ni sit ex assensu Parium Parliamenti.

Sessiones in Parlamento

Rex sedebit in medio principalis Scamni & ad ejus dextram Archiepiscopus loci Ardmarhanus vel Dublin & si extra eorum limites Parliamentum sit
tunc

tunc a dexteris Regis Archiepiscopi Armach & Cas-
selen & a sinistris Regis Archiepiscopi Dublin & Tu-
amen deinde vero a dextris Episcopi Abbates Priores
in secunda formula secundum ordinem a sinistris in
formula Comites Barones et eorum Pares secun-
dum ordinem ad pedem dextrum Regis sedebit Can-
cellarius Capitalis Justiciarius cum suis sociis & eo-
rum Clericis, & ad pedem sinistrum sedebunt Thesau-
rarius & Camerarii & Barones de scarario: Justiti-
arii de Banco & eorum Clerici si sint de Parlamento
deinde procuratores terre sedebunt.

Amerciamenta Absentium.

Rey cum Consilio suo tenetur esse primo die in
Parlamento & quarto die omnes summoniti ad Par-
liamentum erint vocati & eorum defectus recordatur &
per considecationem Regis & omnium Parium Par-
liamenti amerciamenta defectuum taxata.

Dies & hore Parliamenti.

Parliamentum non debet teneri diebus dominici
nec die omnium sanctorum nec die animarum nec in
nativitate Sancti Johannis baptiste omnibus aliis
diebus Rey cum Gradibus Parliamenti debent esse
in Parlamento media hora ante primam festivali-
bus vero diebus propter servitium divinum ad horam
primam & sit Parliamentum in aperto loco semper.

Ordo deliberand. Parliamentum

Petitiones sint assilati sicut deliberantur & sic per
Ordinem legantur & respondeantur (viz) primo deter-
minantur que ad guerram pertinent postea de persona
Regis & Regine & principis sui ac Gubernatione eorum
ac postea de communibus negotijs terre sicut est dele-
gibus faciendis & emendandis videlicet originalibus
judicialibus & executorijs post Judicium reddit & post-
ea singulares petitiones secundum quod sunt super fi-
latoria & primo die Parliamenti sit proclamatio facta
in villa & in loco Parliamenti quod omnes qui querelas
vel

vel petitiones velint deliberare Parlamento id quod faciant infra quintum diem sequentem.

Inceptio Parliamenti.

Quarto die Parliamenti vel quinto predicatio fiat ab aliquo solemnī Clerico ejusdem Diocesis & post predicationem Cancellarius vel alius sapiens & eloquens ac honestus pro Cancellario electus monstrabit causas Parliamenti primo generaliter & postea specialiter stando. Quia quilibet loquens in Parlamento tenetur stare loquendo excepto Rege ut ab omnibus audiatur & post promotionem Parliamenti Rex debet precare Clericos & Laicos quod quilibet in suo gradu diligenter studiose & corditer laboret ad tradendum & deliberandum negotia Parliamenti sicut principaliter intendunt hoc esse primo ad voluntatem Domini et postea ad honorem & proficuum Regis & ipsorum presentium.

De Adjutorijs postulandis.

Rex non solet petere auxilium de populo suo nisi pro guerra sua existente vel filiabus maritandis que petitiones in pleno parlamento debent in scripto deliberari cuilibet gradui parlamenti & in scripto responderi unde sciendum est quod in talibus concessionibus necessarium est ut majores partes cujuscunque status sint ad hoc consentientes & sciendum quod duo milites electi habent plus vocis in concedendo vel negando pro Comitatu suo quam Comes ejusdem Comitatus & eodem modo procuratores Clericorum plus Episcopis suis in concedendo vel negando quod apparet. Quia Rex cum Comunitate sua potest tenere parliamentum sine Episcopis Comitibus & Baronibus si rationabiliter summoniti non veniant quia aliquando fuit quod non fuerunt Episcopus Comes nec Baro, & tunc Reges tenebant parliamentum & si Comunes Clericorum & Laicorum sint summoniti modo debito ad Parliamentum & pro rationabili causa venire nolunt

Similiter

similiter si assignaberint specialiter causas in quibus Rex eos non recte gubernabit tunc Parliamentum tenebitur pro nullo quambis alij status ibidem plenarie interfint & ideo necessarium est quod in omnibus concedendum & faciendum affirmandum & donandum per Parliamentum quod sint concessa per communes parliamenti qui constant ex tribus gradibus videlicet de procuratoribus Clericorum Militibus Comitatum Civibus & Burgensibus & quilibet partium parliamenti est pro seipso in parlamento & omnes pares parliamenti sunt Iudices & Iustitii in parlamento & sedebunt ni quum loquuntur. Communes vero sunt querentes & necessitatibus subvenientes & stabunt.

Judicium casus dubii.

Si dubius casus vel durus guerre vel pacis in terra advenit vel extra terram Ita causa sit scripta in Parlamento pleno & sit ibidem inter pares parliamenti disputata & tractata & tunc si necesse per Regem injungatur cuilibet gradui quod eat quilibet gradus per se habens Clericum cum causa scripta ubi recitabunt causam Ita quod Ordinet & considerent inter eos in quo meliori modo et iusto procedere possunt in casu illo sicut pro persona Regis & seipsis ac pro quibus presentes sunt velint coram Deo respondere. Et sic responsiones eorum in scriptis reportent ut omnibus responsionibus et consilijs auditis secundum melius consilium procedatur sicut si sit discordia inter Regem et alias Magnates par terre fracta fuerit vel inter populum Ita quod videtur parlamento quod talis causa sit per omnes gradus terre tractanda et per eorum considerationem emendanda vel si per guerram Rex et terra turbetur vel si durus casus coram Cancellario vel Iustitiano aut duxum iudicium advenit vel aliquis alius similis casus et si in talibus deliberationibus omnes vel saltem major pars

pars cuiuslibet gradus non consenserint tunc de quolibet gradu Parliamenti excepto Rege eligatur unus qui omnes vel eorum tres ad minus eligant duos Episcopos tres procuratores pro toto clero duos Comites tres Barones quinque Milites Comitatum quinque Cives et quinque Burgenses qui faciunt xlv. personas in ipsis & ipsi sex in tres & condescendere qui a se ipso descendere non potest, cuius ordinatio erit pro toto Parlamento ni in altero ipsorum potest condescendere maior numerus concentrare possit salvo Rege et consilio etiam quod ipsi tales ordinationes postquam scriptum fuerit examinare et corrigere si scriberint, possint in pleno parlamento et non alibi et hoc ex Parlamento assensu. Transcript.

Transcriptum.

Clerici Parliamenti non denegabunt alicui transcripta vel processum aut recordum parliamenti qui solvere voluerint pro quibuslibet decem lineis continentibus decem pollices in longitudine que est mensura rotuli parliamenti unum denarium.

Perjurus Rex.

Parliamentum eriguntum in loco competenti terre quo Regi placuerit & parliamentum non debet de-partiri quando aliqua petitio est pendens non determinata quod si Rex contrarium fecerit perjurus est & parliamentum non debet adjornari ni de consensu omnium parium parliamenti & de omnibus gradibus parliamenti nullus solus potest nec debet decedere a parlamento sine licentia Regis & omnium parium parliamenti & hoc in pleno parlamento.

De fine Parliamenti

Ita quod inde fiat mentio in rotulis parliamenti & si aliquis parliamenti durante parlamento infirmitate detineatur ita quod parlamento accedere non possit tunc infra quartum diem mittat excusatores parlamente

mento quo die si non venerit mittantur ei de paribus suis ad videndum & testificandum infirmitatem suam per recordum eorum sit excusatus vel in misericordia pro defectu quod suspicio ficta infirmiter sit tunc mittat aliquem sufficientem coram ipsis ad essendum pro ipso in parlamento quia sanus & sana memoria non potest excusari ad deparitionem parlamenti primo demandari et Proclamari debet aperte in parlamento si aliquis deliberaverit petitionem parlamento cui factum non est responsus, & si nullus reclamavit est supponendum quod cuilibet petitioni medicina rationabilis facta est et tunc Cancellarius vel alius assignatus per Regem & parlamentum debet dicere alta voce nos damus parlamento licentiam dissolvi & sic finitur parlamentum.

De Consilijs.

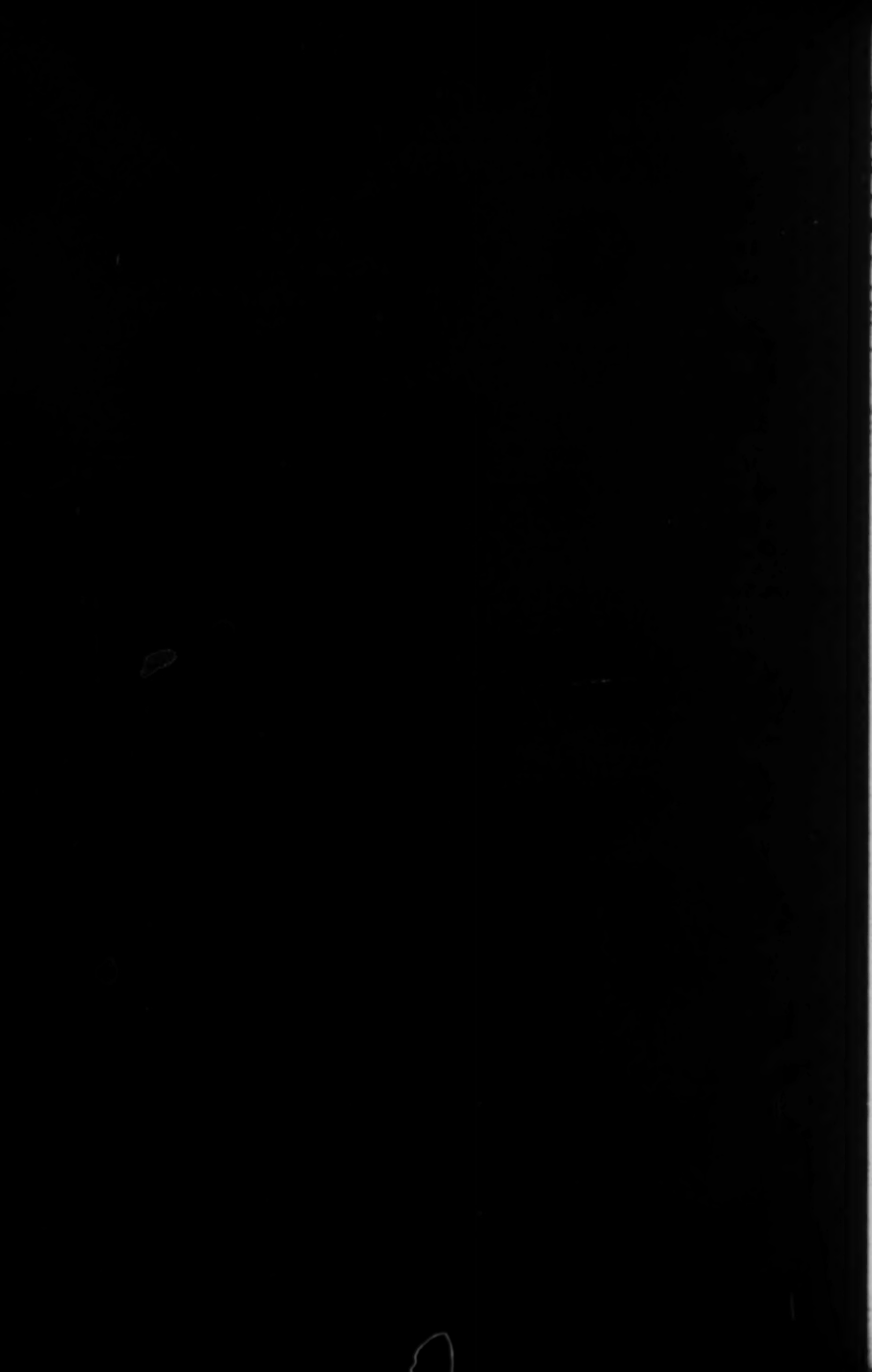
Et etiam Rex vult quod eadem forma in consilijs per summonitionem factam obserbetur excepto quod pro rege & legibus in ipsis consilijs erunt ordinationes in Parlamento vero Statuta.

Constitutio Justic. in Hibernia.

Et etiam Rex vult ut absente Rege a dicta terra sine procuratore ejusdem terre quocunque alio nomine sententur.

R I N I S.

SUBS



RULES
AND
CUSTOMS,

Which by long and constant practice have obtained the Name of
Orders of the House.

GATHERED
By Observation, and out of the
Journal Books from the
time of *Edward 6.*

By *H. S. E. C. P.*

DUBLIN,
Re-printed by *Andrew Crook* Assignee
of *Benjamin Tooke*, Printer to the
King and Queen's Most Excellent
Majesties, on *Ormonde-Key*, 1692.

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C H A P. I.

*The manner of choosing a Speaker
in Parliament.*

THE day the Speaker is chosen, the Proceeding hath been in this manner : Some person (when the generality of Members are come and sit) doth put the House in mind, That for their better proceedings in the weighty Affairs they are come about, their first work is to appoint a Speaker ; and recommends to the House some Person of fitness and ability for that Service and Dignity ; which usually hath been one of the long Robe. If the House generally give a Testimony of their Approbation, two of the Members (which for the most part were of the Council or Chief Officers of the Court) going to the Gentleman named, and agreed to be Speaker, take him from his place, and lead him unto the Chair, where being set, they return to their places.

If more then one person be named for Speaker, and it be doubtful who is more generally chosen ; sometimes one of the Members standing in his place, doth by direction or leave of the House, put a question for determining the same.

In the first Session of the Parliament 1^o *Jacobi*, Sir *Edward Philips*, the Kings Serjeant at Law was first named by Mr. Secretary *Herbert*, as fit for that place, in regard of his Knowledge of the Laws, the gift of Utterance, his long experience and Practice in Parliament ; after some silence, the names of others were mentioned, but the more general voice ran upon Sir *Edward Philips*, who thereupon stood

up, and made a Speech to excuse and disable himself; but the House, notwithstanding his excuse, was willing to proceed to a Question, and directed the Clerk sitting at the Board (as the Order is before the Speaker be chosen, so it is entered in the Journal of that Session) to make the Question upon his name, *viz.* *All that will have Sir Edward Phelips Speaker, say, Yea, &c.* Which done, and he being by general Acclamation chosen Speaker, he was by Sir John Herbert and Sir Edward Stafford (leading him as the form is) placed in the Chair, the antient Seat of Speakers : where being set. after some silence he stood up and made a gratulatory Speech of Form and Thanks.

The first business in the House is ordinarily to read a Bill that was not passed in the last Parliament preceeding, or some new Bill ; as in that of 1^o *Facobi*, a new Bill, Entituled, *Touching Common Recoveries against Infants*, was read.

But on that day before that was done, there was a Motion made for Priviledge of Sir Thomas Skirley, who was chosen a Member to serve in that Parliament, but detained by an Arrest ; upon which a *Habeas corpus* was awarded, and the Serjeant that Arrested him and his Yeoman sent for, and a Committee for Elections and Priviledges chosen.

C H A P. II.

Decorum to be observed in the House.

WHEN the Speaker is set in his Chair, every Member is to sit in his place with his head covered.

No Member in coming into the House, or in removing from his place, is to pass between the Speaker and any Member then speaking ; nor may cross or go over-

overtwart the House; or pass from one side to the other while the House is sitting.

No Member is to come into the House with his Head covered, nor to remove from one place to another with his Hat on, nor is to put on his Hat in coming in or removing, untill he be sat down in his place.

While the House is sitting, no man ought to speak or whisper to another, to the end the House may not be interrupted when any are speaking; but every one is to attend unto what is spoken. In which Case, Penalties have been imposed; as 4. Decem. 1640 and at other times.

When any Member intends to speak, he is to stand up in his place uncovered, and address himself to the Speaker, who usually calls such person by his name, that the House may take notice who it is that speaks.

If more then one stand up at once, the Speaker is to determine who was first up, and he is to speak, and the other sit down, unless he who was first up sit down again, and give way to the other, or that some, other Member stand up and acquaint the House, that another was up before him, whom the Speaker calls and the House adjudge it so.

While one is speaking none else is to stand up or interrupt him untill he have done speaking and be sat down, and then any other may rise up and speak, observing the Rules.

21. Junii, 1604. It was agreed for an Order, *That when Mr. Speaker desires to speak, he ought to be heard without Interruption, if the House be silent and not in dispute.*

12 Jacobi, It was vouched by Sir Dudley Diggs, (a person of much experience in Parliaments) *That when the Speaker stands up, the Member standing up ought to sit down.*

27 April, 1604. Agreed for a Rule, *That if any Question be upon a Bill, the Speaker is to explain,*

but not to sway the House with Argument or Dispute.

June 4, 1604. Agreed for an Order, That who-soever kisseth or disturbeth any Man in his Speech, shall answer it at the Bar.

7. Maii, 1607. Ordered upon the Question, That in going forth, no Man should stir untill Mr. Speaker do arise and go before, and then all the rest to follow after him.

C H A P. III.

Standing Committees.

IN Parliament there have usually been Five standing Committees appointed in the beginning of the Parliament, and remaining during all the Session; other Committees were made occasionally, and dissolved after the Business committed unto them was reported.

The standing
Committees
are for

} Priviledges and Elections.
} Religion.
} Grievances.
} Courts of Justice.
} Trade.

The Committees for Religion, Grievances and Courts of Justice: are always *Grand Committees* of the House, which are to sit in the Afternoons upon such Days as the House doth appoint to them respectively.

The Committee for Trade hath sometimes been a select Committee particularly named, and all such Members as should come to it, to have Voices, as in November, 1640. Sometimes a Grand Committee of the whole House, as 21 Jacobi.

C H A P. IV.

Power and proceedings of the Committee for Priviledges.

But the Committee for Priviledges and Elections hath alway had the precedence of all other Committees, being commonly the first Committee appointed, and ordinarily the first day after, or the same day the Speaker did take his place.

This Committee is constituted of particular Members named by the House.

21 *Jacobi*. Upon naming a Committee for Priviledges and Elections, a Motion was made, That all that come should have Voices: but Sir *Thomas Creu* then Speaker (and well versed in Rules of Parliament) minded the House, That by the Orders of the House, that was not to be done; and by divers other Members, it was insisted on, to be contrary to all former Precedents; yet upon the Debate a Question was put, Whether all that should come should have voices at that Committee; and it passed in the Negative. And another Question being put, Whether the persons nominated only should be of that Committee; it was resolved in the Affirmative.

It was then also agreed, That *Council* should be admitted at that Committee.

The Power anciently given to this Committee, appears by the Entry in the Journal Book 26 Feb. 1600. in 39. *Eliz*. That this Committee should, during all that present sitting of Parliament, examine and make report of all such Cases touching the Elections and Returns of any the Knights, Citizens, Burgesses and Barons of the House. And also, of all such Cases for Priviledges, as in any wise may occur or fall out during all the same Session of Parliament; to the end, the House up-

on Report of the same Examinations, might proceed to such further Course in every the same Cases as shall be thought fit.

And notice was given, That all the Members of the House might repair thither as there should be cause.

This later Power touching Priviledge seems to have been inserted to prevent the Houses being troubled with Informations, untill they were examined and ripe for a Determination.

But in other Parliaments, both before and since, that Power doth not appear to have been given them so absolutely; but matters of Priviledge were, upon Information to the House, there heard, and not in a Committee, unless in some special Cases, wherein there was cause of Examination, or of some preparation of a Charge; as in Case of *Smaley*, 23 *Eliz.* and many other Cases.

The Power of this Committee usually was, as it is entered 6 November, 1640. *To examine and consider all Questions which shall grow and arise in that Parliament about Elections, Returns and other Priviledges.* Or, as in the Parliament 1^o *Jacobi*, thus: *This Committee are to examine all matters questionable touching Priviledges and Returns, and to acquaint the House with their proceedings, from time to time, so, as Order may be taken according to the occasion, and agreeable to ancient Customs and Precedent.*

And to the end these Questions might be speedily determined: and the House might know their Members, Days are usually assigned, beyond which there shall be no questioning a former Election.

So in the Parliament of 21 *Jacobi*, the second day of sitting, It was Ordered, *That all Petitions about Elections and Returns should be preferred to the Committee of Priviledges within a Fortnight from that Day, or else to be silenced for that Session.*

15. April. 1640. Ordered, *that those who would question*

question Elections should do it within Ten days by Petition.

6. Novemb. 1640. Ordered, That all such as will question Elections now returned, should do it in Fourteen days and so within 14 days after any new Return.

Some questions have been, where there have been double Indentures returned for several persons for the same place, whether all or any, or which of them should sit.

The general rule and practice hath been in such case, That neither one nor other should sit in the House, until it were either decided or Ordered by the House: Therefore in April 1640. the Lord High Steward, who had power by himself or his Deputies, to minister the Oaths of Supremacy and Allegiance to all Members returned, before they sat in the House, gave Order, That where there were more returned for any one place then ought to be, there should be none of them sworn till it were decided by the House who were duly Elected. But that which may satisfy herein, is the Order of the House in that Parliament, that if any sit in the House, that are returned by more Indentures then usual, they should withdraw till the Committee for Priviledges had further Ordered.

In the Parliament begun April, 1640. and November, 1640. It was moved; That where some are returned by the Sheriff or such other Officer, as in Law hath power to Return, and others by private hands; there those returned by the Sheriff or such Officer, should sit till the Election be quashed by the House.

But nothing was Ordered upon it.

24 Feb. 1623. Sir Francis Popham being returned a Burgess for Chippenham by one Indenture, and another person returned for the same place by another Indenture: it was moved he might be admitted into the House till the matter were determined against him, and a precedent quoted in Sir Thomas Wentworths Case

Case the last preecedent Parliament. But it was then insisted on by the Chancellor of the Dutchy and others, That this being a Case of a double Return, he was not to be admitted, and so it was referred to the Committee for Priviledges. His Case being reported 9. April, he was judged to be duely Elected.

21. *Jacobi*, Two Indentures were returned for *Southwark*, the one returned *Yarrow* and *Mingy*, the other *Yarrow* and *Bromfield*; upon a Report from the Committee for Elections, it was resolved, That the Election and Return for *Yarrow* should stand good, and that he should sit in the House.

22. *Martii* 21. *Jacobi*, The House was acquainted that Sir *John Jackson* and Sir *Tho. Beaumont* were both returned for one Burgessees place for *Pomfret*; and therefore it was moved, That both might be suspended till it were determined; Mr. *Glanvill* made answer to that Motion, That he that was returned might sit in the House until it were determined; which being contradicted by others, and much Dispute on both sides, it was lastly urged by Sir *Robert Phelps*, That there was not any Precedent for it, and therefore moved the Committee might take the Election into Consideration to morrow, and that in the mean time the parties might forbear to come into the House: which was Ordered accordingly.

4 November. 1640. Upon a Report from the Committee for Priviledges, That several Indentures were returned for Burgessees for the Burrough of *Bos-fenny* in the County of *Cornuval*, the one by the Major of the Town, the other promiscuously: The Committee were of opinion upon view of the bare Indenture, That Sir *Charles Harbord*, who was returned by the Major, was well returned; but the House declared he should not sit till the Election were decided.

In the same parliament, two Returns were made for

for *Marlo Magna*, in both Indentures *John Burlace Esq;* was returned; therefore, upon Report from the Committee, he was admitted to sit, but the other to forbear till the question be determined.

17. April. 19. *Jacobi*, It was Ordered, That no petition should be received by a Committee, but openly at the Committee, and read at the Committee before the party go that preferred it, and the parties name that preferred it be subscribed.

In the parliament in 21 *Jacobi*, upon a Report made from the Committee for Elections and privileges, praying the direction of the House, whether Affidavits might be made use of at that Committee.

These Reasons being insisted upon, that Affidavits should not be admitted.

1. Because it makes the parliament lame without the Chancery.

2. It Entituled the Chancery to judge of Returns.

3. Affidavits are oftentimes cautelously made by Council or parties.

4. Witnesses produced *Viva voce*, by Words, Actions, Gestures, or the like, may discover much, whereby the Committee may judge.

It was likewise informed by Sir *Edvard Coke* late Lord Chief Justice, That in the parliament when he was Speaker, which was 35 *Eliz.* Affidavits were not used, nor since, until of late.

5. Though the Committee examine not an Oath, yet they may punish any that shall testify untruly: of which an instance was given in the last preceeding parliament in the Case of one *Damport*; It was Resolved, That all Affidavits to be taken in any Court concerning Elections, Returns, or any thing depending thereupon, should be rejected, and not hereafter to be Used.

Member chosen in several Places.

IT falling out ordinarily, that one Person is chosen and returned to serve for several places, it is in his Election to make his choice in the House in his own person for what place he will serve, and wave the other Elections so as a writ may go out for a new Election for such place waved, that the number may be full; but if he shall not do it by the time which the House shall appoint, then it hath been said, the House will appoint for what place such person shall continue a Member, and that Writs may go out for the other places: but *Quere* whether it hath been done.

Oftentimes on the First day of the meeting of the House, as soon as the Speaker hath been approved, and sometimes before, such Persons as have been so doubly returned have made their choice.

In the first Session of Parliament 1. *Jacobi*, the same day Sir *Edward Phelips* was chosen Speaker (before he was presented to the King) he signed a Warrant as Speaker, by command of the House, for Election of another Person in the place of Sir *Francis Bacon* being chosen in two places. And in the same Session, the same day after the Speaker had taken his place, divers Members who were severally returned, as elected in several places, made their choise for what places, they would stand, and new Writs ordered.

The Parliament beginning the 13. *April* 1640. and the Speaker being presented the 15th, upon the 16th day divers made their choise upon such double Returns.

The Parliament beginning the 3. *Novemb.* 1640. Upon a long debate for granting time for Elections on double Returns of this nature, it was resolved *That all such as are doubly returned shall make their choise for which place they will serve on Monday next.* 9 Mar-

9 Martii, 21, Jacobi, Resolved, That all Members of this House doubly returned, shall make their Election for which they will serve, and that those in the House shall do it presently, or else new Writs to issue for both.

C H A P. VI.

New Writs for vacant Places.

A General Order hath usually been made in the beginning of the Session, to authorize the Speaker to give Warrant for new Writs, in case of Death of any Member, or of double Returns. where the party makes his choice openly in the House during that Session; so it was Ordered in the beginning of the Parliaments 18. and 21. Jacobi.

Where such general Order is not made, Writs have issued by Warrant of the Speaker, by vertue of special Order, upon Motion in the House.

This Warrant is to be directed to the Clerk of the Crown in Chancery, by Order of Parliament 13. Novemb. 1601.

C H A P. VII.

Rules and Methods of Debates in the House.

When a Motion hath been made, the same may not be put to the Question until it be Debated, or at least have been seconded and prosecuted by one or more persons standing up in their places as aforesaid, and then the same may be put to the Question, if the Question be called for by the House, or their general sence be known, which the Speaker is to demand, unless any Member stand up to speak.

When a Motion hath been made, that Matter must receive a determination by a Question, or be laid aside by the general Sence of the House before another be entertained. An instance is in the Journal 28.

June 1604. A Motion being made, another interposed a Speech tending to another Business: but it was answered, *That there was no Precedent for that Speech to be used before the other Motion, which was made before had received an Answer and an end.* And the House did accordingly determine the first Motion in the first place.

4 Decemb. 1640. Ordered, *That till the Business in agitation be ended, no new Motion of any new Matter shall be made without leave of the House.*

If the Matter moved do receive a Debate *pro & contra*, in that Debate none may spake more than once to the Matter, And after some time spent in the Debate the Speaker collecting the Sense of the House upon the Debate, is to reduce the same into a Question, which he is to propound; to the end, the House in their Debate afterwards may be kept to the Matter of that Question, if the same be approved by the House to contain the substance of the former Debate.

After such Question is propounded, any Member may offer his Reasons against that Question in whole or in part, which may be lay'd aside by a general consent of the House without a Question put.

But without such general consent no part of the Question propounded may be lay'd aside or omitted; and although the general Debates run against it, yet if any Member, before the Question be put *ubi* *but that part*, stand up and desire that such Words or Clause may stand in the Question, before the main Question is put; a Question is to be put, whether those words or such Clause shall stand in the Question.

The like Method is observed where any other Alteration is Debated upon, to be made in a Question propounded; but upon putting a Question for such Addition, Alteration or Omission, any person who hath formerly spoken to the Matter of the Question, may speak again to shew his Reasons for, or against such Alteration, Addition or Omission, before such Question be put.

When

When the Speaker (the House calling for a Question) is putting the same, any Member that hath not before spoken to the Matter, may stand up before the Negative be put.

13. Junii 1604. A Bill touching a Subsidy of Tonnage and Poundage having been formerly upon a third Reading recommitted, was returned, and a *Proviso* being tendred for *Chester*, which was twice Read, the Question was put for Commitment in the Affirmative : but before the Negative was put, one stood up and spake to it, which was admitted for Orderly, because it is no full Question without the Negative part be put as well as the Affirmative.

Every Question is to be put first in the Affirmative: viz. *As many as are of opinion that* (repeating the Words of the Question) *say Yea.* And then the Negative thus : *As many as are of another opinion say No.* To which Question every Member ought to give his Vote one way or other, & the Speaker is to declare his opinion whether the Yea's or the No's have it, which is to stand as the Judgement of the House. But if any Member before any new Motion made, shall stand up and declare, That he doth believe the Yea's and No's (as the Cast shall be) have it contrary to the Speaker's Opinion, then the Speaker is to give direction for the House to Divide, declaring whether the Yea's or the No's are to go forth.

Upon the dividing of the House, those are to go forth who are for varying from or against the constant Orders of the House (as that a Question shall not be put, or not be now put, it being the course of the House, that after a Debate the same should be determined by a Question or the like) or against any positive Order made by the House, or for the passing any new thing, as reading a Petition or Bill, and Committing, Ingrossing or Passing such a Bill, or the like.

10 Decemb. 1640. an Order being made the 9. day That the House should be resolved into a Grand Committee

mittee the next day, for Debating the way for Raising Money: Upon the 10. day a Question was upon Debate put, whether the House should be Resolv'd into a Grand Committee; upon which the House was divided, and a Doubt moved which were to go forth. It was declared for a constant Rule, *Those that give their Votes for Preservation of the Orders of the House, should stay in; and those who give their Votes otherwise, to the Introducing any new Matter, or for any Alteration should go forth.*

24. Martii, 21. Jacobi. Upon a Report from the Committee for Priviledges, a Question was put, That Sir Tho. Holland and Sir John Corbet were well Elected Knights for Norfolk; The House was divided, and a Contest which should go forth; It was over-ruled by the House the No's should go forth.

Which is also the course upon any Question to agree with a Report in favour of the Opinion of a Committee.

Upon dividing the House, the Speaker is to nominate two of those that are in the Affirmative, and two of the Negatives, to count the House; which four (each of them having a Staff in his hand) are to count the number of the Persons who remain sitting in the House, and then to stand within the Door, two on the one side and two on the other, and to count the number of them who went forth as they come in.

While the House is thus divided or dividing, no Member may speak, nor (unless it be to go forth upon the Division) remove out of his place.

When the House is thus told, those two of the Tellers who are of the number of those who have the major Votes, standing on the right hand, and the two others on the left at the Bar (the rest being all set in their places) are to come from thence up to the Table together, (making the usual Obeysance to the House three times; once at the Bar, again in the middle of the House, and again when they are come to the Table) And that person who stands on the right hand,

hand, is to declare to the Speaker the number of the *Yea's* (who sate or went out as the Case is) and of the *No's* : and then with like reverence to depart into their places ; after which, Mr. Speaker is to report the same to the House.

If the Affirmatives have the major Votes by the judgment of the Speaker, or (in case of division) upon the division, the Clerks is to enter the Vote, *Resolved*. If the Negatives, then he is to enter it thus ; The question being put (setting down the Words of the question) It passed in the Negative.

Upon the division, if the Members appear to be equal, then the Speaker is to declare his Vote, whether he be a *Yea* or a *No*, which in this Case is the casting Voice ; but in other Cases, the Speaker gives no Vote.

1. *Maii*, 1606. A question was moved, whether a Man saying *Yea*, might afterwards sit and change his Opinion ; and a Precedent was remembred by Mr. Speaker (Sir *Edward Phelips*) of Mr. *Morris* Attorney of the Wards, in 39 *Eliz.* that in like Case changed his Opinion.

If upon a Debate it be much controverted, and much be said against the question, any Member may move, That the question may be first made, whether that question shall be put, or whether it shall be now put ; which usually is admitted at the instance of any Member, especially if it be seconded and insisted on ; and if that question being put, it pass in the Affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter : But before the question, whether the question shall be put, any person who hath not formerly spoken to the main question, hath liberty to speak for it, or against it ; because else he shall be precluded from speaking at all to it.

If in a Debate there arise more questions then one, and it be controverted which question should be first put, the question first moved and seconded is regularly to be first put, unless it be laid aside by general consen-

If the first Question be insisted upon to be put, and the major part seem against it, the Question is to be, Whether that Question shall be now put: if that pass in the Negative, then the other Question may be put, if desired: nevertheless, any person may speak to it again before it be put. If in the Affirmative then it is to be put without any addition or alteration, as before: And after that Question is put, if any Member move to have the other Question put, every one hath leave to speak to it again as if it were a new Question.

If a Matter be received into Debate, and a Question grow, whether the House shall proceed in that Debate at this time, and it fall out that the House be divided; in such Case the No's are to go forth, it being contrary to the course of the House, that any business should be laid aside till it be determined by a Question; If the Question be for an adjournment of a Debate, the Yea's are to go forth upon the same reason.

After a Question is propounded, no man may speak more than once to the Matter; but having spoken to the Matter, when the Question comes to be put, he may speak to the Manner or Words of the Question, keeping himself to that only, & not ravelling into the Merits of it.

If a Question upon a Debate contain more parts then one, and Members seem to be for one part, and not for the other, it may be moved that the same may be divided into two or more Questions: as 2 Decemb. 1640. The Debate having been, whether the Election of two Knights for the County of *Warwick* were void; a Question was put, whether it should be two Questions: and that being Resolved in the Affirmative, the Questions were put severally, upon the Election of the one first and then of the other.

No Member in his Discourse in the House may mention the name of any other Member then present, but to describe him by his Title or Addition; as, that Noble Lord, Worthy Knight; or by his Office, as, Judge, Ser-
i-ant, Gentleman of the long or short Robe, or by his Place, as the Gentlemen near the Chair, near the Bar, on
the

the other side ; or thus, the Gentleman that spake last; or last save one, or the like.

During any Debate, any Member though he have spoken to the Matter, may rise up and speak to the Orders of the House, if they be transgressed, in case the Speaker do not ; but if the Speaker stands up, he is first to be heard, and when he stands up, the other must sit down till the Speaker sit down. But if any person rise up to speak to the Orders of the House in the midst of a Debate, he must keep within that Line, and not fall into the Matter it self ; if he do, he may be taken down by the Speaker, or any other Member, calling to the Orders of the House.

Whiles a Member is Speaking to a Debate or Question he is to be heard out and not taken down, unless by Mr. Speaker, in such Cases as you find therein expressed, or that he speak of such Matter as the House doth not think fit to admit.

24 Janu^r. 23. *Eliz.* Upon a Debate in the House, Mr. Carleton, endeavouring to speak contrary to the Sense of the House, was interrupted ; and afterwards offering to speak again, saying with some repetition, That it was for the liberty of the House, the Speaker and the House did stay him.

April. 1604. Agreed for a Rule of the House, *He that digresseth from the Matter to fall upon the Person, ought to be suppressed by the Speaker.*

17. *April 1604.* Agreed for a general Rule, *If any superfluous Motion or tedious Speech be offered in the House, the party is to be directed and ordered by the Speaker.*

2. *Maii. 1610.* A Member speaking, and his Speech seeming impertinent, and there being much Hissing and Spitting ; It was conceived for a Rule, *That Mr. Speaker may stay impertinent Speeches.*

18. *Maii. 1604.* It was Resolved, That eight ingrossed Bills should be read the next day half an hour after eight : The next day about that time, a Member entering into a long discourse *De mera fide & sola fide, &c.* was interrupted, and the Question offered, whether he

should go on in respect of the Order. But it was agreed for a Rule, *If any may speak not to the Matter in Question, the Speaker is to moderate.*

14. April, 1604. In a Matter formerly proposed, touching the abuse of the Purveyors, it was argued, Whether it were fittest to proceed by way of Petition to the King or by Bill : which was spoken to by Mr. Marten, Mr. Hoskins and others, and lastly by Sir Henry Fenkin, who was observed to mistake the Question ; and therefore (to prevent the idle expence of time) was interrupted by Mr. Speaker, and thereupon a Rule conceived, *That if any Man speak impertinently or besides the Question in hand, it stands with the Orders of the House for Mr. Speaker to interrupt him, and to know the pleasure of the House, whether they will further bear them*

A Matter upon Debate having been once finally determined by a Question, ought not to be again brought into dispute.

27. Martii. 1604. Sir Edward Coke Attorney-General, and Doctor Hone bring a Message from the Lords, desiring a Conference about the Case of Sir Francis Goodwyn : Upon this Message it was argued, That now the Judgment having passed the House, it could not, nor ought to be reversed by them ; and upon the Question it was Resolved, There should be no Conference.

In sapientum decretis non est litura.

2. April. 1604. A Vote having passed some days past, That no Conference should be admitted with the Lords, the same Question was again moved, but was carried in the Negative ; And it was then urged for a Rule, That a Question being once made and carried in the Affirmative or Negative cannot be questioned again, but must stand as the Judgement of the House.

In the Answer of the Commons House of Parliament to King James his Objections in Sir Francis Goodwyn's Case, 3 April 1604. The Objection being, that they refuse Conference with the Lords.

The Answer is in these words, Concerning our Refusing Conference with the Lords, there was
none

none desired untill after our Sentence passed; and then we thought that in a matter private to our own House, which by Rules of Order might not be by us revoked, we might without any imputation refuse to confer.

C H A P. VIII.

Grand Committees, and their manner of Proceedings.

A Grand Committee consists of as many Members, at least, as constitute the House (less may not sit or act as a Committee) who have general Powers to consider of any Matters touching the subject Matter referred, and to present their Opinions therein to the House, the better to prepare Matters of that nature, or Bills therein, for the House; which may better be prepared by the liberty that every Member hath in a Grand Committee, as well as in other Committees, to speak more then once to the same Business (if there be cause) which is not permitted in the House.

But Grand Committees have their Powers and Rules, in other Circumstances, given them in express words by the House; as, to send for Witnesses to hear Council, or assign them on either part, to send for Records; which appears by several Motions made in the Parliament 21. *Jacobi*. Sir Robert Phelps (a person of much Experience in the Course and Orders of Parliament) moved the House from the Grand Committee for Courts of Justice, that they might have Power in the particulars aforesaid.

8. *Martii*. and 13. *Martii* in the same Parliament, upon Report from the Committee aforesaid, (which then was a Grand Committee) the House was moved for their Order to the Merchant Adventurers to bring in their Patents, and that the Inventor of the pretermitted Customs should attend the Committee.

15. *Maij*. 22. *Jacobi*, Upon complaint from the Grand Committee for Grievances, that they had sent several Warrants for divers Persons to bring in their Patents, which they had not done; The House Ordered the *Serjeant at Arms* to be sent for them.

When any great business is in agitation that requires much Debate, or a Bill for a publick Tax is to be Committed, the House doth use to resolve it self into a Grand Committee of the whole House ; which is done by a question, and then the Speaker leaves his Chair : and thereupon the Committee (which must consist of as great a Number as Constitutes a House, as is before declared) makes choise of a Chair-man, in which case, if more then one be generally called to the Chair, any Member may stand up, and by consent of the Committee, put a question for one of those named to be the Chair-man.

19 *Jacobi*, A dispute being in the Committee, which of two Members named should go to the Chair, the Speaker was called to his Chair, and put the question, That Sir *Edward Coke* (who was one of the persons named) should take the Chair, and then the Speaker left his Chair.

The Chair-man of the Grand-Committee is to sit in the Clerks place at the Table, and to write the Votes of the Committee.

If upon putting a question, the Chair-man (who is to judge by the Voices) have delivered his Opinion that the *Yea's* have it, and any Member stand up and say, He believes the *No's* have it, (or contrariwise) the Committee is to divide within the House ; the Chair-man directing the *Yea's* to go that side of the House, that is on the one hand, and the *No's* to the other side, and then he is to appoint one of each to count the numbers and report them ; which is to be done in the same order as in the House, saving that the Obeysance is only twice in the Committee, thrice in the House. If the numbers be equal, the Chair-man hath a casting voice, otherwise he hath no voice in the Committee.

When the Committee hath gone through the Matter referred to them. the Chair-man having read all the Votes, is to put the Question, that the same be reported to the House : if that be resolved, He is to leave

leave the Chair, and the Speaker being again called to the Chair, (or at the next Sitting of the House if it be then adjourned) the Chair-man is to report what hath been resolved at the Committee, standing in his usual place, from whence (if it be not in the seat next the Floor) he is to go down to the Bar, & so to bring up his Report to the Table.

If the Committee cannot perfect the business at that Sitting, they may not adjourn as other Committees ; but a Question is to be made for Reporting to the House, and that leave be asked, that the Committee may sit at another time on that Business.

But if, as some times it falls out, the Matter hath received a full debate in the Committee, and it is judged fit to be resolved in the House, the Speaker is again called to the Chair for that purpose.

In other things then as aforesaid, the Rules of Proceedings are to be the same as are in the House.

4. Junii, 1607. Agreed for a Rule.

1. Every Question upon the voices of a Committee bindeth, and cannot be altered by themselves.

2. Every thing directed and agreed to be Reported, ought to be accordingly Reported ; but not every thing spoken or debated at a Committee.

28. July, 1641. Declared by the House, that no Committee ought by Vote to determin the Right or Property of the Subject, without first acquainting the House therewith.

6. Aug. 1641. Resolved, That no Vote pass at a Committee, and not Reported nor confirmed by the House shall be any Rule, or Direction for any Court of Justice in Westminster-Hall to ground any Proceedings thereon.

C H A P. IX.

In what Cases Members are to withdraw.

13^o I Acobi, Upon the Report from the Committee for Priviledges, touching Election for Gatton, Sir Henry Brittain being concerned, and offering to speak in his own Case ; it was resolved up-

on long Debate, he should be heard to inform the House, and then go forth.

21 Jacobi, A Bill which concerned the Master and Fellows of Magdalen Colledge in Cambridge, being read the second time, and in Debate, It was removed, that Dr. Gooch Master of Magdalen Colledge (who served for the University) and so a party ought to withdraw ; It was resolved, *He may first speak, and then withdraw.*

June 1604. A Bill for establishment of divers Mannors, &c. of the late Duke of Somerset, being offered to the question of Commitment ; it was moved, That Mr. Seymour, a Member of the House and party to the Bill, might go forth during the Debate ; which was conceived to be agreeable to former Orders and Precedents in like Cases, and was so Ordered, and Mr. Seymour went presently forth of doors.

When any Complaint is made against a Member, or Exceptions taken to any thing spoken by him (after he hath been heard to explain himself, if he desire, or the House command it, which is usually done by him standing in his place) if the House be not satisfied, but fall in Debate thereof, such Member is to withdraw ; as in the several Cases of Doctor Parry, the Chancellor of the Datchy, and others appears.

C H A P. X.

Censures of Members for Offensive Words or Misbehavior.

THOUGH freedom of Speech and Debates be another undoubted Priviledge of the House : yet whatsoever is spoken in the House, is subject to the censure of the House : and where they find cause (as, *in licitis facile fines transgredimur*) offences of this kind have been severely punished, by calling the person to the Bar, to make submission ; committed him to the Tower, (being the usual Prison to which the Commons did commit Delinquents) expelling the House ; disabling him to be a Member during that Parliament,

Parliament, and sometimes of any future Parliament.

The Entries in the Journal I find to be as followeth :

17. *May*, 1572. Upon sundry Motions made by divers Members of the House, it was Ordered, That *Arthur Hall* Esq; for sundry Speeches used by him in the House and abroad, should be warned by the Serjeant to be at the House on Monday following, and at the Bar, to answer Matters charged against him ; and all such persons as had noted his Words, either in the House or abroad, were forthwith to meet, and set down the same Words in writing, and deliver the same to the Speaker.

On Monday following, Mr. *Hall* was brought to the Bar by the Serjeant, was charged with several Articles, and confessed his folly ; and humbly submitted himself to the House, and was remitted.

8. *Feb.* 1575. *P. W.* Esq; one of the Burgessees of *Tregony* in the County of *Cornwal*, was, for unreverend and undutiful Words uttered by him in the House, touching the Queen, sequestred ; that the House might proceed to conference and consideration of his said Speech : upon Debate whereof he was committed to the Serjeants Ward, as prisoner, and so remaining, should be examined upon his said Speech, for extenuating his fault therein.

The next day a Report was made of his examination and confession of the words ; he was brought to the Bar by the Serjeant, received this Judgment by the mouth of Mr. Speaker.

That he should be committed close prisoner to the Tower, till the House should take further consideration concerning him.

4 *Febr.* 1580. Being the third Session of the Fourth Parliament of Queen *Elizabeth* 23 Year of her Reign, complaint was made in the House against *Arthur Hall* Esq; before named, who had caused a Book to be printed, wherein was published the Conferences of the House ; and in it was contained matter of Reproach against some particular Members of the House,
derogatory

derogatory to the general Authority, Power, and State of the House, and prejudicial to the validity of the proceeding of the same. The matter was referred to a Committee to examine, and upon Report thereof, and bringing the said Mr. *Hall* to the Bar several times to Answer; he was sentenced by the House to be committed to the Tower, (as the prison proper to this House) there to remain for the space of six months, and so much longer, as untill he should himself willingly make a Retraction of the said Book, to the satisfaction of the House, or of such Order as the House should make during that Session.

That the said *Arthur Hall* should be fined to the Queen Five hundred pounds for his said Offence.

That he should be presently severed and cut off from being a Member of this House during this Parliament, and a Writ to Issue for Election of a new Burgess, for the Borough of *Grantham* in his stead.

That the said Book should be deemed and adjudged false and erroneous.

Thereupon, the said Mr. *Hall* was brought to the Bar, unto whom Mr. Speaker, in the name of the whole House pronounced the said Judgement, in form aforesaid; and the Serjeant was commanded to take the charge of him, and to convey him to the Tower, and deliver him to the Lieutenant of the Tower, by Warrant of this House to be signed by the Speaker.

18. *March*, 1580. He having continued prisoner in the Tower without any Retraction, the House appointed a Committee to allow the said Retraction, and to Report it to the House at the next Session.

It appeareth by the Journal 21 *November*, 1586. That he was disabled for ever to serve in Parliament.

17. *December*, 1584. A Bill against Jesuits and Seminary Priests passed upon the Question: Dr. *Parry* only gave a Negative, and after Inveighed in violent Speeches against the whole Bill. Upon which he was sequestered from the House into the outer-room, into the hands of the serjeant, and not to confer with any while

while the *House* was in Debate of that business. After wards he was brought to the Bar, and there kneeling was told by the speaker, if he thought fit the *House* was content to hear his Reasons; but he refusing was committed to the serjeants Ward.

The next day he was brought to the Bar, and kneeling, confessed he had undutifully behaved himself; and rashly and unadvisedly uttered those speeches he had used; and was with all his heart, very sorry for it: Alledging withal he had never been of the *House* till that session, and so could not so well know the Orders of the *House* as he should do; and that he would not henceforth willingly offend the *House*, nor any one man in it; and so humbly prayed for their good favour toward him. Whereupon, being again sequestered out of the *House*, after some Arguments and Debates, it was Resolved, upon this acknowledgment of his fault; and his humble submission he should be received into the *House* again, as a Member thereof, and take his place as before, so that he would still afterwards behave himself in good sort as he ought to do: and thereupon being called again to the Bar, and there kneeling, directly reiterating his former Confession of his fault, and humble submission, with promises of better demeanor, he was admitted.

13. Feb. 1606. Upon a Report made in the *House*, of the Remembrances formerly set down of the particulars of a Conference, the Speaker offering to read the Paper, and being interrupted by some Motions and Disputes, whether they should be Read one by one and so Debated. or all at once: In that difference, one of the Knights for *Buckingham-shire*, with a loud voice (not standing up bare-headed as the Order is) pressed to have them Read. The *House* observing his earnestness, and manner of sitting and Calling, for Orders sake urged him to stand up and speak. He stood up, and pretending to offer some Reasons, fell into an Invektive against the *Scots*, much distasting the *House*; yet out of a common care to expedite the Weighty Business then

in hand, his Speech was neglected without Tax of Censure.

But on *Monday* following it was remembered, and his Words of offence recited in particular, the Gentleman being absent, was sent for by the Serjeant.

Touching the manner of Proceeding in this Case, many Motions and Questions were Moved. As, 1. Whether to name a Committee to consider wherewith to charge him. 2. Whether to censure him upon their own knowledge, without other Circumstances, the fault being apparent. 3. Whether to charge him in general, or with the particular Words. Much was said upon these Questions *pro* and *contra*, and the Precedents of *Parry* and *Throckmorton* remembred wherein for words spoken in the House, the Proceedings was by the House, and not by Committee; the Offences generally charged, and punished, and the Words put in Oblivion: and so in this Case, the Judgment and Proceeding resolv'd to be accordingly.

The Serjeant having brought the Offender; it was moved he might be heard at the Bar, which was assented unto; and after he had spoken, he was Commanded to retire; and not long after, was called in again, to the Bar, where kneeling, Mr. Speaker acquainted him, since the Offence was so apparently heinous, the House did not hold it fit, that any particulars should be named, or to give any reason of their Judgment; but the Order was, He would be carried to the prison of the Tower, and there remain during the pleasure of the House: & that he should be dismissed from his place of Knight of the Shire for *Bucks*, and a new Writ to issue for a new choice.

15. Febr. 18. *Jacobi*. A Bill being read the second time for the better observation of the Sabbath: one of the Members made an Investive against it, and something which seemed to reflect on a Member of the House, who presented it, as favouring of a Puritan and a Faction spirit. Exceptions were taken at the Words. After he had explained himself, he was Ordered to withdraw out

out of the House; and a Debate being had, he was called to the Bar, and upon his knees, he received the Judgement of the House, pronounced by the Speaker. That he should be discharged from the service of the House; with an Intimation, that his Judgement was very merciful, for that the House might for so exorbitant an Offence, have Imprisoned and further punished him.

3. April. 1604. In a Debate upon a Bill, a Member of the House uttered some Speeches highly distasting the House: but no notice was taken of it till the Bill was committed, & then the Words being repeated, he was called to the Bar, where he made his excuse, & was pardoned.

26. April. 1641. Great Offence was taken by the House at words spoken by Mr. *J. H.* He was first heard to explain himself, and then commanded to withdraw, and was called to the Bar and suspended the House during that Session of Parliament.

27. May, 1631. A Paper was brought in containing words spoken by Mr. *Taylor* a Member of the House concerning the passing the Bill of Attainder of the Earl of *Strafford*: who being heard to explain himself, and then commanded to withdraw; after some Debate in the House, it was resolved, That he should be expelled the House; he made uncable of ever being a Member of this House; and should forthwith be Committed prisoner to the Tower, there to remain during the pleasure of the House; and should make an acknowledgment of his Offence, both at the Bar and at *Windsor* publicly. And he was called to the Bar, and there kneeling, Mr. Speaker pronounced the Sentence accordingly.

Of later times it hath been observed, as most conducing to the Service of the House, that if in Debate words be let fall that give offence, exceptions should be taken the same day, and before such Member go out of the House; or he who is offended may move, that such person may not go out of the House until he hath given satisfaction in what was by him spoken. And in such Case, after the present Debate is over, the words must be repeated by the Persons excepting; And in Case he de-

fire, or the House command him, he is to explain himself, standing in his place, which if he refuse to do, or the House be not satisfy'd with such explanation, then he is to withdraw: But neither is this to interrupt the present business of the House, as in the Cases before-mentioned; or if be omitted that day, hath it been recalled afterwards to avoid mistakes, and out of a willingness rather to pass by, then take occasion of offence.

13. *May, 12. Jacobi.* Upon report of the Amendment to the Bill for the due Observation of the Sabbath day, complaint was made the same Indignity was offered to *Sr. R. Owen*, when he was in the Chair at the Committee, by *Sir W. H.* that told him he was Partial; and by *Sir R. K.* who took him by the hand, and told him, he would pull him out of the Chair, that he should put no more tricks upon the House.

Sir W. H. being present, made an acknowledgment of his Error, which upon the Question was taken for a good satisfaction.

Sir R. K. was Ordered by the House to acknowledge his Error at the Bar.

19 *Jacobi*, Some Speeches passing in the House privately between two of the Members, and some offence taken, which seems was not intended to be given; one of them in going down the Parliament stairs struck the other; who thereupon caught at a sword then in his mans hand to strike with it. Upon complaint made of it to the House, they were both of them ordered to attend the House. Being come, he who gave the blow was called in, and standing (not at the Bar, but) by the Bar, was examined by Mr. Speaker; confessed the giving the blow, insisted on the provocation, and withdrew. The other was also called in, to relate the truth. After he had made the relation, and was likewise withdrawn, & testimony given by a Member of the House who heard the words the House proceeded to Sentence against *Mr. C.* who struck the blow: he being brought to the Bar, there on his knees he received Judgement, which was pronounced by the Seaker That he should be committed to the Tower during the pleasure of the House.

C H A P. XI.
Calling the House.

THere are two ends of Calling the House.

1. To discover whether any were in the House, who are not returned by the Clerk of the Crown in Chancery; it having been accounted a great Crime, and severely punished.

5. *Martii. 1557.* In the Parliament held 4 & 5 *Phil. & Marie*, I find this Entry.

For that *Christopher Perne* affirmed, that he is returned a Burgess for *Plimpton*, in *Devon*, and hath brought no Warrant thereof to the House, nor is returned hither by the Clerk of the Crown, by Book or Warrant; he is awarded to be in the custody of the Serjeant, till the House have farther considered.

It appears by that Book afterwards, that he was chosen a Burgess, and admitted.

2. *January, 1562.* In the second Parliament of Queen *Elizabeth*, For that it seemed to the House, being very full, that there were a greater number then was returned; therefore the Names were immediately called over and as they were called, departed out of the House.

7 *Febr. 1588.* The House was called, and every one answered to his name, and departed out of the House as they were called.

2 But chiefly the Calling the House, is to discover what Members are absent without leave of the House, or just cause; in which case, Fines have been imposed. And on this occasion, if the House be called, the manner hath been to call over the Names, and each Member to stand up at the mention of his name, uncovering his head. Such as are present are marked, and the Defaulters called over again the same day, sometimes the day after, sometimes summoned, sometimes sent for by the Serjeant.

19. *June, 1607.* The House was called by the General Book of Names, in order as they were set down by the

the

the Clerk of the Crown at the beginning of the Parliament (so it is there entred) The Clerk called every one by his name ; the person called, if present, riseth up bare-headed and answereth ; if absent, he is either excused, and so entred, *viz.*

either $\left\{ \begin{array}{l} \textit{Licentiatur per speciale servitium.} \\ \textit{Excusatur ex gratia.} \\ \textit{Agrotat.} \end{array} \right.$

If none excuse him, he is entred, *Disceit.*

That no Person may sit in the House until he be so returned as aforesaid, appears by several Instances of Persons who were not Members ; and for coming into the House, were brought to the Bar, and some committed ; and some sworn before they departed, to keep secret what they had heard there.

C H A P. XII.

Petitions in Parliament.

Petitions are usually presented by Members of the same County ; if they be concerning private Persons, they are to be subscribed, and the Persons presenting them, called into the Bar to avow the substance of the Petition, especially if it be a Complaint against any.

So 18. November, 1640. One *Vivers* presented a Petition in the name of the Major, Aldermen, Burgessees and other Inhabitants of *Bambury*, was called in, and did acknowledge the hand to the Petition to be his ; and that he did deliver it by order, and on behalf of the Town of *Bambury*, and thereupon it was committed.

The like, in the same Parliament, upon reading the Petition of one *Ward* of *Salop* : And likewise on reading the Petition of *Henry Hoogan*.

C H A P. XIII.

Priviledge of Parliament.

IT is often mentioned in the Journals upon Debates, That Priviledge was due *eundo, morando, redeundo*,
for

for the Persons of Members, and their necessary Servants; and in some cases for their Goods and Estates also during that time.

Some question hath been touching the time in which the Priviledge is to be allowed, and the manner how it is to be obtained.

For the first, the Precedents are very numerous for allowing *Priviledge* during the Session.

1. For their own persons, They have been priviledged from Suits, Arrests, Imprisonments, attendants on Tryals, serving in Juries, and the like; yea, from being Summoned or called to attend upon any Suit in other Courts by *subpœna* served on them. To begin with the latter.

Subpœna.

In the Parliament 4. & 5. *Phil. & Maria*, 29. *January*, 1557. *Thomas Enny's* Burgess for the Borough of *Tusk* complained that a *Supœna* was delivered him to appear in Chancery, and required the priviledge of the House; whereupon Sir *Clement Higham* and Mr. Recorder of *London* were sent to the L. Chancellor to revoke the Process.

And albeit an Entry is made in the Journal 10 *Februarii*, 1584. 26. *Elizabeth*, that upon Motion made touching the Opinion of the House for Priviledge, in case of a *Subpœna* served out of the Chancery upon Mr. *Richard Cook* a Member of the House: It was Ordered that the Recorder of *London*, and two other Members of the House attended by the Serjeant, should repair presently in the name of the whole House into the body of the Court of Chancery, and there to signify to the Lord Chancellor and master of the Rolls, That by the Ancient Liberties of this House, the Members of the same are priviledged from being served with *Subpœna's*: and to require withal, not only the discharge of Mr. *Cook's* Appearance, but from thenceforth to grant Priviledge for other Members, upon the request of the House signified under the Speaker's hand: which Mr. Recorder and the rest did accordingly. But they return this Answer, That the Lord Chancellor told them, he knew no such Priviledge touching *Subpœna's*, and would not allow it,

unless the House did prove it had been allowed also in that Court of Chancery: whereupon Precedents were directed to be viewed; but within few days after the Parliament ended.

Yet the practice in succeeding times declares the Priviledge, as appears by the Instance following (which was the next Year after) and these that follow, with the multitude more which might be mentioned.

27 *Eliz.* One *Kirle* having caused a *Subpæna* out of the Star-Chamber to be served on a Member of the Commons House; & for want of appearance, taken out an *Attachmen't*, & enforced the payment of money to discharge the same; the said *Kirle* was Committed till he had pay'd cost to the Person served, and made a submission to the House on his knees at the Bar.

15. *Maii* 1604. A *Subpæna* out of the Chancery to appear, was served on the Person of Sir *Robert Needham* Knight, a Member of Parliament; upon Complaint thereof, the Serjeant was sent to Attach the body of him who served the *Subpæna*.

7. *Maii*. 1607. The Serjeant was sent for *Edward Throckmorton*, for serving a *Subpæna* on Sir *Oliver Cromwel*.

14. *Maii*, 19 *jacobi*, Upon Complaint of the service of a *Subpæna* on a Member of this House, Sir *Edward Coke* vouched a Precedent; 10 *Eduardi* 3. That a *Subpæna* being served on the Clerk of this House, the party was Committed for breaking the Priviledge of this House.

4. *Maii*, 1607. A *Subpæna* out of the Exchequer being served on Sir *R. Pawlet* a Member of the House; the House thought fit to grant Priviledge, and that the same course should be taken as in other the like cases are usual: *viz.* The Serjeant by his Mace to Attach the Parties Delinquent, and to bring them to the Bar, to receive the Judgment of the House. and Mr. speaker the next day wrote a Letter to the Lord Chief Baron that no further process do issue against the said Sir *R. Pawlet*.

3 *Decemb.* 19 *Jacobi*, Upon occasion of a *Subpæna* served on Mr. *Breeriton*, it was agreed by the whole House that the serving of a *Subpæna* upon a Member of this House,

House, knowing him to be a Parliament Man, is a breach of Priviledge, and *Napper* who served the *Subpœna* was Committed.

Arrest.

33 *Eli7.* The Sheriffs of *London* were fined by the Commons, and sent to the Tower, for not delivering a Burgess arrested for Debt, sitting the Parliament.

6. *April*, 1593. The Serjeant at the Mace, who arrested Mr. *Neal*, a Member of this House, upon an Execution ; as also *Webbin*, at whose Suit he was arrested, contrary to the Priviledge of this House, were this day brought to the Bar, and were both committed Prisoners to the Tower ; and the Serjeant at Arms attending this House, was ordered to deliver them over to the Lieutenant of the Tower.

Utlary.

13. *May*, 1607. *Nicholas Allen* an Attorney, and *Palmer*, at whose suit Mr. *Martin*, a Member of this House, was outlawed, were ordered to be sent for by the Serjeant, and brought to the Bar to answer their Contempt.

Attachment.

In the same Parliament, there being complaint, that an Attachment was taken forth against Mr. *Belingham*, a Member of this House, out of the Court of Chancery, for a Contempt ; the House ordered to have Priviledge, and a Letter was ordered to be sent to Mr. *Evelin*, one of the six Clerks, to stay the Suit.

Issues.

A Writ of Petition being issued out, a Writ was directed to the Sheriff, to levy xx. l. Issues upon Sir *Robert Oxenbridge*, for Non-appearance ; the same was complained of, and the House granted Priviledge, with this, That if the Issues were not discharged before the next day at night, the parties Delinquent were the day after to be brought to the Bar by the Serjeant.

Tryals.

14. *May*, 1576. Sir *Edward Montague*, a Member of the House, was warned to attend a Tryal in *London*, which was to be had against him ; and was by Order of the House priviledged ; and the party that gave the

warning, was summoned to appear at the Bar the next morning.

21. Feb. 1588. Upon Motion made by divers Members of the House, having Writs of *Nisi prius* brought against them, that Writs of *superfedeas* might be awarded, in respect of the Priviledge of this House, due to the Members : It was Ordered, That those Members of the House, who have occasion of such Priviledge, should declare their Case to the Speaker, who shall thereupon direct the Warrant of this House to the Lord Chancellour for awarding such Writ of *superfedeas*.

3 Martii. 18 Jacobi, Upon a Report from a Committee appointed to consider of a way of staying Tryals against Members of the House ; That by several Precedents, the Custom appeared to be in such Cases, That on Motions and Orders in the House, Letters were written to the Justices of Assize for stay of Tryals against Members of the House ; which Letters were entred in the Journal Book, and that it belongeth to the Clerk to write the same. It was thereupon resolved, That the former course of writing Letters to the Justices of Assize, should be held according to former Precedents.

10 Junii, 1607. Sir Robert Johnson a Member of the House moved for a Letter to stay a Tryal against him in the Exchequer, which was granted, as appeareth by the Entry on the 13th day, when a Petition of Sir Robert Brett was read against that Priviledge. The Priviledge formerly granted was affirmed, upon this Reason. That no man should have any thing to withdraw him from his Service in the House. The like 14 Feb. 18 Jacobi.

And so much this Priviledge hath been insisted on by the House, that it hath been a Question, Whether any Member of the House could consent that himself should be sued during the Session ; because the Priviledge is not the persons so much as the Houses : And therefore, when any person hath been brought to the Bar for any Offence of this nature, the Speaker hath usually charged the person in the name of the whole House, as a breach of the Priviledge of the House.

And

And when, 3. June, 1607. Sir *Thomas Holcroft* a Member of the House, had occasion to sue at Law, and was sued, with which he was content, and desired the leave of the House; there was a Question, whether the House should give leave for a breach of Priviledge, and it was resolved *The House might give leave.*

Furies.

7 Muii, 1607. Sir *Thomas Bigg* and Sir *Thomas Love*, being returned upon an Attaiint in the Kings Bench; it being moved, that in this Case they ought to have Priviledge: it was so ordered, and the Serjeant sent with his Mace, to deliver the pleasure of the House to the Secondary, the Court sitting.

22 Novemb. 1597. Sir *John Tracy*, a Member of this House being at the Common-pleas Bar, to be put upon a Jury; the serjeant at Arms was presently sent with his Mace to fetch him thence, to attend his Service in the House.

Commitment.

April 12 Jacobi, Sir *William Bampfield* was committed by the Lord Chancellor for a Contempt, after the Writ of Summons, but before the Election. Ordered upon the Question, That he shall have his Priviledge by Writ of Habeas Corpus.

Sheriff.

1 Jacobi. 2 Sess. Sir *John Peyton* Knight for Cambridge being returned the last Session, and since chosen Sheriff; Mr. Speaker moved to know the pleasure of the House, Whether he should attend his Service here: And it was resolved upon the Question in the House; he should attend his service here.

Priviledge to Servants.

Priviledge was also granted to the Servants of Members during the sitting of Parliament.

16 Febr. 5 Eliz. Robert Parker Servant to Sir *William Woodhouse* Knight for Norfolk, being attached in London, at the suit of one Baker, in a Trespass; had a Warrant of Priviledge, notwithstanding Judgment given against him for Four Marks.

20 Feb, 18 Eliz. 1575. Upon the Question, and also upon Division of the House, *Edward Smaley* Servant

unto *Arthur Hall* Esq; one of the Burgesſes for *Grantham*, being arreſted upon an Execution, had priviledge.

16 Decembr. 44 *Eliz.* *Anthony Curwen* ſervant to *William Huddleſton* Esq; one of the Knights of *Cumberland*, being arreſted upon a *Capias ad ſatisfaciendum*, out of the Common-Pleas, for ſix pounds Debt, and Forty ſhillings Damages, and detained in Execution; a *Superſeſeas* was awarded, and he was delivered.

11 *Maii* 19 *Jacobi*, The Under-ſheriff of *Middleſex* was called to the Bar, for cauſing *Alexander Melling* ſervant to the Chancellor of the Dutchy to be arreſted; he denied he knew him to be his ſervant: Mr. ſpeaker let him know, the Houſe had ordered him to have priviledge; and therefore ordereth the Under-ſheriff to diſcharge him.

2. ſeſſion of the Parliament 1 *Jacobi*, Sir *Edward Sandys* moveth a breach of priviledge by Sir *Robert Leigh* a Juſtice of Peace, for committing his Coachman to *Newgate*: Sir *Robert Leigh* was ſent for by the Serjeant, and an *Habeas Corpus* for the priſoner. Sir *Robert Leigh* being brought to the Bar, acknowledged his fault, and was diſcharged, and ſo was the priſoner.

3 *Maii*, 1606. *Valentine Syre* ſervant and Bag-bearer to the Clerk of the Commons Houſe, being arreſted upon an Execution, was by Order and Judgment of the Houſe enlarged.

7 *Sept.* 1601. *Woodal* ſervant of *William Cooke* Esq; a Member of the Houſe, being arreſted, and in priſon in *Newgate*; the ſerjeant at Arms was preſently ſent to *Newgate* to bring him to the Houſe, *ſedente Curia*; and being brought to the Bar with his Keeper, was diſcharged by Order of the Houſe from his ſaid Keeper, and from his Imprisonment.

1 *July*, 1607. *John Paſmore* the Marſhals man, being ſent for and brought to the Bar, for arreſting *John Feſſop* Waterman, ſervant to Sir *Henry Nevil*, a Member of the Houſe; he denied that he knew he was Sir *Henry's* ſervant until afterwards; notwithstanding, he took an *Aſſumpſit* from him to answer the Action: The
Houſe

House thought fit to commit him to the Serjeant till the House's pleasure were further known, and till he had discharged the *Assumpsit*, and paid the Fees.

17. June, 1609. Upon a Report of the Committee for Priviledges, That a menial servant of Sir *Robert Wroth* was arrested eight days before this Session; the Serjeant was sent for the prisoner, and the serjeant that made the arrest, one *King*, who followed it, and *Fisher* at whose suit he was arrested.

4 Junii, 19 Jacobi, *Johnson* a servant to to Sir *James Whitelock*, a Member of the Commons House, was arrested upon an Execution by *Moor* and *Lock*, who being told Sir *James Whitelock* was a Parliament man; *Fulk* one of the Persecutors said, He had known greater mens men then Sir *James Whitelock* taken from their Masters heels in Parliament time. This appearing, *Lock* and *Moor* were called into the Bar, and by the Judgment of the House were sentenced.

1. That at the Bar they should ask forgiveness of the House, and of Sir *James Whitelock* on their knees.

2. That they should both ride upon one horse bare-backed, back to back, from *Westminster* to the *Exchange*, with papers on their breasts, and this Inscription, *For Arresting a Servant of a Member of the Commons House of Parliament*: and this to be presently done *sedente Curia*: which judgment was pronounced by Mr. Speaker against them at the Bar upon their knees.

28 Aprilis 22. Jacobi, A Warrant was Ordered to be issued by the Speaker for a Writ of Priviledge, to bring up *Andrew Bates* servant to Mr. *Richard Godfrey* of the House, in Execution with the Sheriff of *Kent*, at the suit of one *Hunt*. Goods.

That the Members of this House have also Priviledge for their Goods, is not without some Precedent.

12 March. 1606. Complaint was made by Mr. *James* a Burgeß of Parliament, That his horse standing at his Inn was taken by the Post-masters servant; both the Post-master and his servant were sent for and brought to the Bar: *Morison* the Post-master appearing to be igno-

rant of what his servant had done, and disavowing it, was by Order of the House discharged: But upon the testimony of a witness at the Bar, that he told the servant when he took the horse, that a Member of Parliament was owner of it, the servant was committed.

In Adjournment.

During the Adjournment, like Priviledge was granted and affirmed.

In Decemb. 1606. *Thomas Finch* a Servant to Sir *Nicholas Sandys* Knight one of the Burgesses for *Quinborough* was arrested during the Adjournment; which being conceived to be a great Contempt to the Priviledge of the House, an *Habeas Corpus* was awarded to bring him to the House, & he was accordingly brought, & also one Knight, who procured the arrest, & *Harriſon* the Yeoman.

The excuse was, *Finch* was an Attorney at Law, yet it being avowed by Sir *Nicholas Sandys*, that *Finch* lay in his house, solicited his Causes, and received Wages from him; and it being insisted on that all menial and necessary servants are to be priviledged and instance given of a Precedent of the Baron of *Walton's* solicitor, and *Huddleston's* solicitor, in the time of Queen *Elizabeth*: upon the Question, *Finch* was priviledged, and delivered according to the said Precedents.

During that Adjournment, a Suit was prosecuted in the Court of Wards against *Nicholas Potts* Esq; and *Francis Wethered*, Gent. Committees of a Ward which concerned Mr. *Nicholas Davyes*, servant to the then Speaker as Assignee of the Ward. The Speaker by vertue of a former general Order of the House, wrote a letter to Sir *Cuthbert Pepper* Surveyor of the Court of Wards and Liveries, to make known to the Court, That the said *Davyes* was one of his Clerks and nearest Servants, and the Priviledge now as warranable as in time of sitting; & therefore prayed him & the Court to take notice of it.

During another Adjournment in March following the Speaker warranted by the like general Order at the desire of Sir *Edmund Ludlow*, who was summoned to attend the Execution of a Commission out of the Chancery,

wrote a Letter to the Commissioners to Excuse his attendance, & that he should not be prejudiced by his absence.

In May, 1607. during an Adjournment, the Speaker directed a Letter to the Lord President and Council at York, to stay Proceedings in a Suit against *Talbot Bowes* a Member of this House.

Privilege, as well before as after the Parliament.

The great Question is, Within what time this privilege may be claimed before and after the sitting of the Parliament. It is clear, it hath been claimed and allowed for some time before, and after the sitting. One Precedent may serve, because it is famous, and for the proceedings in it *instar omnium*.

1 *Jacobi*, The first day of sitting, complaint was made, That Sir *Thomas Shirley* chosen a Member of the House, was arrested four days before the sitting of this Parliament; a Warrant issued to the Clerk of the Crown for a *Habeas corpus*, to bring him to the House being then prisoner in the Fleet; and the Serjeant and his Yeoman were sent for in custody, who being brought to the Bar, and confessing their fault, were remitted for that time: The Writ being not executed, the House fell again into Debate touching the privilege, and how the Debt to the party might be satisfied because the Debt was gone if the party were delivered; and thereupon came to three Questions:

1. Whether Sir *Thomas Shirley* shall have privilege.

2. Whether presently, or to be deferred till further Order.

3. Whether the House should be petitioners to the King, according to former Precedents, for some course, for securing the Debt to the party, and saving harmless the Warden of the Fleet. All which Questions were resolved in the Affirmative, and a Bill drawn to secure *Simpsons* Debt, &c. which also produced a Bill for relief of Plaintiffs in Writs of Execution, where the Defendants in such Writs are arrested, and set at liberty by privilege of Parliament.

17. April, Upon hearing Council in the House at th

Bar,

Bar, for Sir *Thomas Shirley* and the Warden of the *Fleet*; and upon shewing divers *Precedents*, 39. *Hen. 6.* one *Clark* taken in Execution before the *Parliament* begun, was priviledged 30 *Hen. 6.* *Ferrers Case* in *Hollingsheads Chronicle*; the Case of *Huddleston's* servant before remembered; this being added, that his Body was freed, but his Lands and Goods left subject. It was Ordered, That *Simpson* at whose Suit, and the Serjeant by whom the Arrest was made, should be committed to the Tower.

4. *May* following, an *Habeas Corpus* was awarded to the Warden, to bring Sir *Thomas Shirley* to the House; the Warden denied to execute it, for which 7. *May* following, he was sent for by the Serjeant, and brought to the Bar, who denying to bring his prisoner, a new Writ of *Habeas Corpus* was awarded, and the Warden was committed to the Serjeant, with this, That if that Writ were not executed, then he should be delivered over to the Lieutenant of the Tower, as the House's prisoner.

8 *May*, The Serjeant was sent with his Mace to the *Fleet*, the House sitting, to require the Body of Sir *Thomas Shirley*, being directed by the House to pursue the Precedent of *Ferrers*, recorded in *Hollingshead's Chronicle*, and in the Book of Jurisdiction of Courts by *Crompton*: but the Serjeant being denied, a Warrant was made to the Serjeant, to deliver the Warden of the *Fleet* to the Lieutenant of the Tower, to be kept close prisoner.

11 *May*, The Warden was again sent for, and brought to the Bar, and refusing to deliver up his prisoner, he was committed to the place called the Dungeon, or little-ease, in the Tower.

14 *May*, A new Warrant was ordered for a new Writ of *Habeas Corpus*, and that the Serjeant should go with the Writ; that the Warden should be brought to the Door of the *Fleet* by the Lieutenant himself; and there the Writ to be delivered to him, and the Commandment of the House to be made known to him by the Serjeant, for the Executing of it. That in the mean time;

time, the Warden to be presently committed to the Dungeon and after to be returned thither again.

18. *May*, The Warden did deliver Sir *Thomas Shirley*, and so was not put into the Dungeon.

19. *May*, He attending at the door, was brought in to the Bar, where, upon his Knees, confessing his error and presumption, and professing he was unteignedly sorry he had so offended this Honourable House; Upon that submission, by direction of the House, the Speaker pronounced his pardon and discharge, paying ordinary Fees to the Clerk and the Serjeant.

That this priviledge doth take place by force of Election, and that before the Return be made, appears by the proceeding in the Case following.

19. *November*, 1601. Upon Information to the House, that one *Roger Baston* servant unto *Leiston*, Baron of *Walton*, who upon credible report of divers Members of the House, was affirmed to be chosen a Burgess for the Borough of *Newton* in *Lancashire*, bet not yet returned by the Clerk of the Crown) had been during that Session of Parliament arrested in *London*, at the Suit of one *Muscle*; the said *Muscle*, together with the Officer that made the arrest, were sent for by the Serjeant and brought to the Bar; and there charged by Mr. Speaker in the name of the whole House, with their Offence herein: and having been heard, *Baston* was ordered to have priviledge, and to be discharged of his Arrest and Imprisonment, and the Offenders for three days committed to the Serjeant; and ordered to pay such Charges to *Baston*, as the Speaker shall set down, and their Fees.

For how long time before, and after the Parliament.

By these Instances, as also by *Clarks Case*, 39 *Hon.* 6. and the Case of Sir *Roberts Wroths* servant before recited, it appeareth, That priviledge doth take place before the Parliament begin, but for what time is the Question: what appears by the Journal Book tending to clear it, is thus.

6. *March*, 1586. This day *William White* brought to

to the Bar, for arresting Mr. *Martin*, a Member of the House, That the Arrest was above fourteen days before the beginning of the Parliament: the House thereupon appointed a Committee to search [the Precedents.

Upon Report made, that Mr. *Martin* was arrested above twenty days of the beginning of the Parliament, held by prorogation; and upon Debate, the House being divided in opinion about the privilege; for the ending of the business, three Questions were propounded by the Speaker.

1. Whether the House would limit a time certain, or a Reasonable time, to any Member of the House for his privilege?

The House answered, *A Convenient time.*

2. Whether Mr. *Martin* was arrested within this Convenient time?

The House answered, *Yes.*

3. If *White* should be punished for arresting Mr. *Martin*?

The House answered, *No.* And the reason is given, Because the arrest was twenty days before the beginning of the Parliament, and the Creditors did not know what should be taken for a Reasonable time.

24. *April. 1640.* It was this day said in the House, and not contradicted, that every Member of the House hath privilege for sixteen days *exclusive*, and fifteen days *inclusive*, before and after every Parliament.

The like mention is made in several Parliaments, by Members in Debate.

How Obtained.

For the manner of Obtaining this privilege, 22. *March 18 Jacobi.* It was resolved, that no protection under any Mans hand of this House is good.

22. *Febr. 6. Edw. 6.* It is Ordered, that if any Burges required Privilege for Himself or his Servant, upon declaration thereof to the Speaker, he should have a Warrant signed by Mr. Speaker to obtain the Writ,

22. *Febr. 18, Eliz. Aug. 1575.* A report was made by the Attorney of the Dutchy from a Committee for delivery

Delivery of *Smaley* a Servant to *Arthur Hall*, before mentioned, that they found no Precedent, for setting at large by the Mace any Person in Arrest, but only by Writ. And that by divers Precedents of Record perused by them; it appears, that every Knight, Citizen, or Burgeſſ of this Houſe, which doth require Priviledge, hath uſed in that Caſe to take a Corporal Oath before the Lord Chancellour or Lord Keeper. That the party for whom ſuch Writ is prayed, came up with him, and was his Servant, at the time of the Arrest made. But on the 27th Febr. after ſundry Reasons, Arguments and Diſputations in the Houſe; It was Reſolved, that the ſaid *Smaley* ſhould be brought the next day to the Bar by the ſerjeant, and ſo ſet at Liberty by Warrant of the Mace, and not by Writ.

According to which Reſolution, the next day *Smaley* was brought to the Bar in the Houſe by the Serjeant, accompanied with two Serjeants of *London*, and was preſently delivered from his Imprisonment, and Execution, according to the former Judgement of this Houſe, and the ſaid Serjeants diſcharged of their ſaid priſoner.

2. March. 1592. Upon a Report from the Committee of Priviledges and Elections; that one Mr. *Fitzherbert* was returned a Burgeſſ, and excepted againſt, becauſe he was alledged to be Out-lawed, and detained upon ſuch Out-lawry: The Houſe Ordered, that Mr. ſpeaker ſhould move the Lord Keeper for an *Habeas Corpus cum cauſa*, to bring up the Body and Cauſe of Mr. *Fitzherbert*.

But the next day Sir *Henry Knivet* entring into a Diſcourſe, touching the Priviledges of the Houſe of ancient times, uſed and accuſtomed for the conventing of any perſons into this Court, declared his opinion, That Mr. *Fitzherbert* was rather to be called to appear in this Houſe by the ſerjeants Mace of this Houſe, then any Writ of the Chancery, and quoted a Caſe of *George Ferrers*; but was put in remembrance by Mr. ſpeaker that the manner for the bringing Mr. *Fitzherbert* had received the Order of the Houſe yeſterday, and was therefore now
neither

neither to be recalled, nor further treated of by this House, till the Appearance of the said *Mr. Fitzherbert* be first made in this House, according to the said former Order for the same.

On the 7th of the same Month, The House being acquainted by *Sir Edward Hobby*, that the Lord Keeper having been moved for a Writ of *Habeas corpus cum causa*, for *Mr. Fitzherbert*, his Lordship thought it best, in regard of the ancient Liberties and Priviledges of this House, That the serjeant at Arms be sent, by Order of this House, for the said *Mr. Fitzherbert*, at his own charge; by reason whereof he may be brought hither to the House, without peril of further being arrested by the way : which was also approved of.

Injuries offered to the Members and their servants, during the session, have been usually punished by the House, upon Complaint.

29. Febr. 1575. One *Williams*, for assaulting a Burgess of this House, was upon Complaint sent for by the serjeant, and brought to the Bar, and Committed to the Serjeants Ward.

23 April. 1. *Murie*. One *Mmingron* for striking *William Johnson* a Burgess, was sent for, and confessing it, was Committed to the Tower.

28. Nov. 1601. Complaint being made by *Mr. Fleetwood* a Member of the House, that one *Holland* a scriviner, and one *Brooks* his servant, had evil Intreated and beaten the servant of the said *Mr. Fleetwood* in his presence; they were both sent for by the serjeant, and brought to the Bar; and for the said Offence Committed for five days to the serjeant.

12 Febr. 18 *Jacobi*, *Mr. Lovell*, a Member of the House, informed, that one *Daryell* threatned his person, That for a speech spoken by him in the House, he should be sent to the Tower during the Parliament, or presently after: *Daryell* was sent for by the serjeant, to Answer it to the House; and upon Testimony of it he was Committed to the serjeant till Thursday following, and then to acknowledge his fault, or to be Com-

Committed to the Tower.

16. June 1604. Complaint being made of one *Tho. Rogers*, a Currier dwelling in *Cole-man-street*, for abusing *Sir John Savill* in slanderous and unseemly terms, upon his proceedings, at a Committee in the Bill touching Tanners. &c. he was sent for by the serjeant at Arms to the Bar, to answer his offence.

C H A P. XIV.

Amendment of Returns.

18 *Iacob*, The Sheriff of *Licestershire* having returned *Sir Thomas Beaumont*; upon Report from the Committee for Elections, That *Sir George Hastings* was duely chosen, the Sheriff was ordered to return *Sir George Hastings* to the Clerk of the Crown, and he to accept it, and file it.

21 *Jacob*, Upon Report from the Committee of Priviledges, That in the Election of Mr. *John Maynard* for *Chippingham*; Mr. *John Maynard* was chosen, but by a mistake, *Charles* was afterward written in stead of *John*: It was resolved, The Return should be amended without a new Writ; and the Question being, who should amend it: Resolved, The Baliff should do it, and not the Clerk of the Crown; and that it should be sent down to the Bayliff in the Countrey, and he to return *John Maynard Esq*; the first Burgeſſes.

1 *Febr.* 1640. It being Resolved, That the Election of Mr. *Erle* for one of the Burgeſſes of *Wareham*. is a good Election; It was Ordered, That the Officer, that was the Officer when the Return was made or his Deputy, or the Electors, should amend the Return. But the next day it was Ordered, That *Edward Harkin*, the late Mayor of *Wareham*'s Deputy, should come to the Bar of the House, and amend the Return.

20 *Febr.* 1640. The Bayliff of *Midhurst* in *Suffex* came to the Bar, (being sent for by Order of the House) and amended one of the Indentures of Return of Burgeſſes for that Town, and the other was taken off the File.

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